



## COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND CABLE

D.T.C. 11-AR-B

June 3, 2013

Investigation by the Department of Telecommunications and Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, and 39, and G. L. c. 166, §§ 11 and 12, regarding the failure by individually-named common carriers of telecommunications services to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009.

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### **FINAL ORDER**

*In the Matter of:*

New England Municipal Telephone Associates LLC	2009	11-AR-9
Reliance Communications International, Inc.	2009	11-AR-12
Forest City Network Solutions, LLC	2008, 2009	11-AR-41
Global Crossing Bandwidth, Inc.	2008, 2009	11-AR-43
GPCS of Massachusetts LLC	2008, 2009	11-AR-44

## I. INTRODUCTION

In this Order, the Department of Telecommunications and Cable (“Department”) dismisses the proceedings against each of the above-captioned five telecommunications carriers (collectively, the “Five Carriers”).<sup>1</sup> Each of the Five Carriers is or was registered with the Department and therefore was required to file an annual return but failed to do so for 2008 and/or 2009. G. L. c. 159, § 32; G. L. c. 166, § 11. Each of the Five Carriers is included in this Order because each subsequently corrected its delinquency or otherwise rectified its situation. Therefore, the Department dismisses the investigations of all Five Carriers.

The Five Carriers are: New England Municipal Telephone Associates LLC (“NEMTA”), D.T.C. 11-AR-9; Reliance Communications International, Inc. (“Reliance”), D.T.C. 11-AR-12; Forest City Network Solutions, LLC (“Forest City”), D.T.C. 11-AR-41; Global Crossing Bandwidth, Inc. (“Global Crossing”), D.T.C. 11-AR-43; and GPCS of Massachusetts LLC (“GPCS”), D.T.C. 11-AR-44. Two carriers, NEMTA and Forest City, corrected their delinquencies by filing the required annual returns. Two other carriers, Reliance and GPCS, corrected their delinquencies by filing affidavits stating that they did not provide intrastate telecommunications services during the relevant years. Global Crossing provided evidence that it had previously withdrawn its registration from the Department, and was therefore not required to file annual returns for the years in question. The Department further discusses the particular circumstances of each of the Five Carriers which warrant a dismissal of each individual investigation below.

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<sup>1</sup> For administrative ease and to better address the individual characteristics of each investigation, the Department today issues three final orders through generic docket number D.T.C. 11-AR.

## II. PROCEDURAL HISTORY

On December 2, 2011, the Department opened investigations into each of the 129 carriers that failed to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009, including the Five Carriers. *Investigation by the Dep't of Telecomms. & Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39, & G. L. c. 166, §§ 11, 12, regarding the failure by individually-named common carriers of telecomms. servs. to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009*, D.T.C. 11-AR, Order at 1, 7 (Dec. 2, 2011) (“*Order Opening Investigation*”). On the same day, the Department served notice of the investigations by certified mail to the last known address on file with the Department for each of the 129 carriers. *Annual Returns*, D.T.C. 11-AR, *Notice of Investigation and Hr'g at 1* (Dec. 2, 2011) (“*Notice*”). The Department published a copy of the *Notice* in the *Boston Globe* on February 14, 2012. The *Notice* directed each carrier to state in writing, before February 10, 2012:

1. Whether the company filed the annual return for the relevant calendar year(s). If so, to provide a copy of the annual return(s) and documentation of the filing(s). If not, to explain why, and to state whether the failure to file was reasonable.
2. Whether the company provided telecommunications services within the Commonwealth during the relevant calendar year(s).
3. If applicable, whether the Secretary of the Commonwealth reinstated the company's authority to do business within the Commonwealth.
4. If applicable, to provide the current company address and contact information and to provide an amended tariff and Statement of Business Operations reflecting that change.

*Order Opening Investigation* at 5-6; *Notice* at 1. The Department subsequently dismissed the investigations into eleven carriers that responded to the *Notice* and corrected their delinquency.<sup>2</sup>

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<sup>2</sup> Memo. of Dismissal from the Dep't to Birch Commc'n, Inc., Grasshopper Group, LLC, TVC Albany, Inc., Camp Overflow, LLC, and Sprint Spectrum, L.P. (Feb. 21, 2012); Memo. of Dismissal from the Dep't to SNET Diversified Group, Inc. (Feb. 23, 2012); Memo. of Dismissal from the Dep't to Saturn Telecomm.

The Department held individual public and evidentiary hearings for each of the Five Carriers on February 28, 2012. An attorney entered an appearance at the hearings for Forest City, Global Crossing, and GPCS. NEMTA and Reliance did not attend their respective hearings, and no members of the public were present at any of the hearings.

During each evidentiary hearing, the Department marked several exhibits for identification and inclusion in the record, including copies of: (1) the Statement of Business Operations (“SBO”) and tariff cover pages on file with the Department for the carrier at issue in the hearing; (2) registration information on file or posted with the Secretary of the Commonwealth of Massachusetts for that carrier; (3) the carrier’s Federal Communications Commission (“FCC”) Form 499 filer identification information; (4) all notices issued by the Department reminding the carrier of its obligation to file annual returns for the relevant calendar year(s); (5) all extensions issued by the Department for delinquent annual returns; (6) signed certified receipt cards attached to the Department’s *Notice* mailing or copies of any returned “Undeliverable” mailing; (7) annual returns filed with the Department by the carrier for years subsequent to the delinquent annual returns; and (8) additional relevant information on file with or collected by the Department.<sup>3</sup> The evidentiary records for the Five Carriers are described in Appendix A.

The Department provided numerous opportunities and reminders for each of the Five Carriers to comply with the annual returns filing requirement. The Department issued courtesy notices reminding them of their obligation to file annual returns by the March 31 deadline for

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Servs., Inc. (Dec. 19, 2012); Memo. of Dismissal from the Dep’t to Sunesys, LLC, CornerStone Tel. Co., LLC, and Magellan Hill Techs., LLC (Feb. 22, 2013); Memo. of Dismissal from the Dep’t to Airnex Communications, Inc. (Mar. 7, 2013).

<sup>3</sup> The additional information includes e-mail correspondence between Department staff and carriers; e-mail delivery failure notices; and telecommunications database registration printouts in lieu of SBOs.

each year in question.<sup>4</sup> *Order Opening Investigation* at 4. Further, prior to opening these investigations, and in an effort to obtain compliance and avoid enforcement proceedings, the Department granted multiple extensions past the March 31 annual deadline for all delinquent 2008 and/or 2009 annual returns. *Order Opening Investigation* at 4. The Department notified each delinquent carrier by mail of the extended filing deadlines for each year.

The year(s) of delinquency for each of the Five Carriers are as follows:

<b>Carrier</b>	<b>Docket #</b>	<b>Year(s) of Delinquency</b>
New England Municipal Telephone Associates LLC	11-AR-9	2009
Reliance Communications International, Inc.	11-AR-12	2009
Forest City Network Solutions, LLC	11-AR-41	2008, 2009
Global Crossing Bandwidth, Inc.	11-AR-43	2008, 2009
GPCS of Massachusetts LLC	11-AR-44	2008, 2009

### III. ANALYSIS AND FINDINGS

A carrier must register with the Department in order to provide telecommunications services in the Commonwealth. *See Regulatory treatment of telecomms. common carriers within Mass.*, D.P.U. 93-98, Order at 12 (May 11, 1994) (“*Common Carrier Regulatory Treatment Order*”). The registration process consists of filing an SBO and an intrastate tariff with the Department. *Id.* Registration is complete upon the Department’s approval of the intrastate tariff. *Id.* Every registered carrier avers that it has the managerial, technical, operational, and financial ability to comply with statutory requirements, and the Department gives registered carriers a presumption of capability unless it specifically finds otherwise. *Investigation by the Dep’t of*

<sup>4</sup> For the 2008 annual returns, the Department mailed a reminder notice to carriers on February 10, 2009. For the 2009 annual returns, the Department mailed a reminder notice to carriers on March 12, 2010.

*Telecomms. & Energy on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39 & G. L. c. 166, §§ 11, 12, regarding the failure by several individually named common carriers of telecomms. servs. to file their annual returns for year 2001 by Mar. 31, 2002, & their annual returns for year 2002 by Mar. 31, 2003, & to pay statutory forfeitures, D.T.E. 03-76-A, Order at 5 (Aug. 20, 2004).*

Specifically:

Any common carrier that has an approved tariff on file with the Department, and that has submitted a Statement of Business Operations, will be considered a “registered” common carrier in the Department’s new framework. Registered common carriers will be subject to the Department’s general supervisory authority, including specific requirements in G.L. c. 159, and the Department’s regulatory policies as articulated in Department Orders.<sup>5</sup>

*Common Carrier Regulatory Treatment Order at 12.*

The Commonwealth imposes a requirement that registered carriers file annual returns pursuant to G. L. c. 159, § 32 and G. L. c. 166, § 11. Both statutes require registered carriers to file annual returns, but only one, G. L. c. 166, § 11, directs the Department to assess a financial penalty for failure to comply with filing requirements.

Under G. L. c. 159, § 32, **all** carriers have a duty to file an annual return for each calendar year by March 31 of the following year or at a later date fixed for good cause, in a format prescribed by the Department. That is, a carrier must file an annual return regardless of whether it is doing business in the Commonwealth.

In contrast, under G. L. c. 166, § 11, only carriers “doing business in the [C]ommonwealth” have a duty to file an annual return for each calendar year by March 31 of the following year, or at a later date fixed for good cause, in a format prescribed by the Department.

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<sup>5</sup> In its *Common Carrier Regulatory Treatment Order*, the Department eliminated the requirement that carriers, excluding payphone providers, obtain a certificate of public convenience and necessity from the Department before offering service within the Commonwealth. See *Common Carrier Regulatory Treatment Order* at 12.

Any carrier neglecting to file the annual return required by G. L. c. 166, § 11 shall be subject to statutory forfeitures specified in G. L. c. 166, § 12.<sup>6</sup> In addition to these fines, the Department shall refer a failure to comply with G. L. c. 166, § 11 to the Attorney General for enforcement. G. L. c. 159, § 39.

Although all carriers must file annual returns, the Department requires carriers without intrastate revenues and carriers not providing telecommunications services in the Commonwealth to file in a different format from those carriers that have intrastate revenues and are providing telecommunications services. The Department considers that those carriers who do not have intrastate revenue or who are not providing telecommunications services in Massachusetts are not “doing business in the [C]ommonwealth” for purposes of reporting revenues under G. L. c. 166, §§ 11, 12. *See Investigation by the Dep’t of Telecomms. & Energy on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39 & G. L. c. 166, §§ 11, 12, regarding the failure by several individually named common carriers of telecomms. servs. to file their annual returns for the year 2000 by Mar. 31, 2001, & to pay statutory forfeitures, D.T.E. 02-13-G, Order at 3 (Sept. 20, 2002) (“D.T.E. 02-13-G”) (finding that because carriers did not earn any intrastate revenue for the reporting period, they were not doing business in the Commonwealth in that period, and thus the statutory forfeitures pursuant to G. L. c. 166, §§ 11, 12 did not apply). Registered carriers without intrastate revenues or carriers not providing telecommunications services in the Commonwealth are required to file a notarized affidavit attesting to these facts for the relevant year, but are not subject to statutory forfeitures under G. L. 166 § 12. *Id.**

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<sup>6</sup> Such carriers shall forfeit \$5.00 per day for the first fifteen days of delinquency, \$10.00 per day for the next fifteen days, and a sum not exceeding \$15.00 per day for each day thereafter until the annual return is filed. G. L. c. 166, § 12. Further, if the Department determines that a carrier “unreasonably refuses or neglects to make such return,” the carrier shall forfeit up to \$500.00 for each offence, as an additional penalty. *Id.*

As to what constitutes the aforementioned “good cause,” the Department’s longstanding precedent is that:

Good cause is a relative term and it depends on the circumstances of an individual case. Good cause is determined in the context of any underlying statutory or regulatory requirement, and is based on a balancing of the public interest, the interest of the party seeking an exception, and the interests of any other affected party.

*Pet’n of N.E. Tel. & Tel. Co. for an alternative regulatory plan for the co.’s Mass. intrastate telecomms. servs.*, Order at 51-52, D.P.U. 94-50 (May 12, 1995) (“*D.P.U. 94-50*”) (citing *Boston Edison Co.*, D.P.U. 90-335-A at 4 (1992)) (finding no good cause for Attorney General’s request to reopen an investigation where reopening would cause significant delays in hearing schedule and where the only evidence in support of reopening was uncorroborated news reports); *Tel-Save, Inc. v. N.E. Tel. & Tel. Co.*, Order at 5, D.T.E. 98-59 (Oct. 19, 1999) (finding good cause for extension of deadline for complying with requirement for the creation of a new web application where petitioner would be unduly prejudiced if it did not have adequate time to create a workable application); *In re Ruth C. Nunnally, under the provisions of M.G.L. c. 159, as amended, for a certificate of pub. convenience and necessity to provide pay-tel. services within Mass.* D.P.U. 92-34-A (Feb. 8, 1993) (finding good cause to extend the deadline for appealing dismissal of an application to provide payphone service because petitioner was a *pro se* applicant unable to file her notice of appeal due to employment and health-related problems); *Order on Att’y Gen.’s motion for reconsideration and motion to stay appeal period*, Order at 7, D.P.U. 89-199-A (Dec. 27, 1989) (finding no good cause for Attorney General’s request for twenty day extension after motion to reconsider Department’s previous approval of utility’s bond issuance where utility established that delays could cause increased costs for ratepayers). Under this standard, the Department must balance the effect of granting an extension on the party



benefitting from the extension, on the public, and on any other party who might be affected. The Department has applied this test to find good cause to extend a filing deadline in situations where although delinquent, the carrier's annual return reported a negligible amount of revenue.

*Investigation by the Dep't of Telecomms. & Energy on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39 & G. L. c. 166, §§ 11, 12, regarding the failure by several individually named common carriers of telecomms. servs. to file their annual returns for year 2001 by Mar. 31, 2002, & their annual returns for year 2002 by Mar. 31, 2003, & to pay statutory forfeitures, D.T.E. 03-76-F, Order at 7 (Aug. 20, 2004) ("D.T.E. 03-76-F")* (finding that because a carrier reported revenues of \$73.59 on its delinquent annual return, it was not doing business in the Commonwealth for the year corresponding to the return for purposes of G. L. c. 166, §§ 11, 12, and therefore, statutory forfeitures did not apply). The Department has similarly applied the test to find good cause in situations where the statutory forfeitures, if applied, would "far exceed" the revenue reported on the carrier's delinquent annual return. *Investigation by the Dep't of Telecomms. & Energy on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39 & G. L. c. 166, §§ 11, 12, regarding the failure by several individually named common carriers of telecomms. servs. to file their annual returns for the year 2000 by Mar. 31, 2001, & to pay statutory forfeitures, D.T.E. 02-13-B, Order at 3 (Sept. 20, 2002) ("D.T.E. 02-13-B")* (statutory forfeitures of \$8,345 would far exceed the revenue that these companies were likely to have derived from their payphones in Massachusetts).

Each of the Five Carriers failed to file the required annual return for 2008 and/or 2009. However, the Department is dismissing the investigations into each of the Five Carriers because each subsequently either corrected its delinquency or demonstrated that it had previously withdrawn its registration with the Department.

Although NEMTA and Reliance both filed their returns after the statutory deadline, the Department finds good cause to extend their filing deadlines and allows them to rectify their missing returns. Reliance and GPCS also filed their returns after the statutory deadline, but the Department finds good cause to extend their filing deadlines because both filed affidavits attesting to the fact that the carrier did not provide intrastate telecommunications services for the relevant years. Finally, Global Crossing provided evidence that it had withdrawn its registration from the Department years earlier, under a different name, and was therefore not under an obligation to file annual returns for the relevant years. After review and consideration, the Department does not assess forfeitures or cancel the SBOs and intrastate tariff(s) of any of the Five Carriers, but dismisses their investigations for the individually stated reasons below.

A. NEMTA

NEMTA is a registered carrier with an SBO and an approved intrastate tariff on file with the Department. Therefore, NEMTA must file an annual return with the Department for every year that it is registered under G. L. c. 159, § 32, and must also file an annual return for each year in which it conducted business in the Commonwealth pursuant to G. L. c. 166, § 11. According to the Department's records, NEMTA did not file its 2009 annual return by the March 31, 2010 statutory deadline, but instead filed it on February 10, 2012. *Investigation by the Dep't of Telecomms. & Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39, & G. L. c. 166, §§ 11, 12, regarding the failure by individually-named common carriers of telecomms. servs. to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009*, D.T.C. 11-AR-9 at Ex. 7E (filed, Feb. 10, 2012).<sup>7</sup> NEMTA's 2009 annual return indicates that NEMTA's intrastate revenue for the year totaled \$2,106.00.

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<sup>7</sup> Citations to individual exhibits in the record pertaining to a specific docket in this Order shall be cited as "[Docket No.], Ex. [Exhibit No.]".

Although carriers must file an annual return by March 31, the Department may, for good cause, fix a date later than March 31 for a carrier to file its annual return. G. L. c. 159, § 32; G. L. c. 166, § 11. In this case, the statutory forfeitures calculated from April 1, 2010, for NEMTA's delinquent 2009 annual return would far exceed the intrastate revenue that NEMTA reported.<sup>8</sup> As stated above, the Department has previously recognized good cause to extend the filing deadline in such a circumstance. *See D.P.U. 94-50; D.T.E. 03-76-F; D.T.E. 02-13-B.* Accordingly, the Department finds good cause to establish February 10, 2012, as the filing deadline for NEMTA's 2009 annual return. *Id.* As NEMTA's 2009 annual return is now current, the Department dismisses the proceeding in 11-AR-9.

B. Reliance

Reliance was a registered carrier with an SBO and an approved intrastate tariff on file with the Department in 2009 and therefore was required to file an annual return, or if applicable, an affidavit. G. L. c. 159, § 32. According to the Department's records, Reliance failed to file an annual return or affidavit for that year by the statutory deadline.

On February 27, 2012, Reliance notified the Department in an affidavit that it did not provide telecommunications services in Massachusetts in 2009. 11-AR-12, Ex. 9B. Reliance also filed a Certificate of Withdrawal with the Department for the purpose of withdrawing its SBO and tariff. 11-AR-12, Ex. 9B. Reliance acknowledged that its withdrawal would prevent it from operating and/or providing telecommunications services in the Commonwealth. *Id.*

The Department finds good cause to fix a later filing deadline for Reliance's affidavit in lieu of its annual return under G. L. c. 159, § 32. *D.P.U. 94-50.* Reliance was not "doing business in the Commonwealth" in 2009 for purposes of G. L. c. 166, §§ 11, 12, and although it

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<sup>8</sup> If applied, the statutory forfeiture under G. L. c. 166, § 12 would have amounted to \$10,480.00, approximately five times the amount of revenue reported by NEMTA in its late-filed annual return.

was delinquent, it ultimately filed the required affidavit. *D.T.E. 02-13-G*; 11-AR-12, Ex. 9B.

Accordingly, the Department establishes February 27, 2012, as the filing deadline for Reliance's signed affidavit for 2009. As Reliance's signed affidavit in lieu of its 2009 annual return is now current, the Department dismisses 11-AR-12.<sup>9</sup>

C. Forest City

Forest City is a registered carrier with an SBO and an approved intrastate tariff on file with the Department. Therefore, Forest City must file an annual return with the Department for every year that it is registered, pursuant to G. L. c. 159, § 32 and G. L. c. 166, § 11 but it failed to do so for 2008 and 2009. The Department may, for good cause, fix a later filing deadline. G. L. c. 159, § 32; G. L. c. 166, § 11. In considering whether good cause exists to extend a filing deadline, the Department must balance the interests of the party benefitting from the extension, the public's interest, and the interests of any other affected parties. *D.P.U. 94-50*.

Although Forest City failed to respond the Department's reminders, extensions, and *Notice*, its counsel appeared at the carrier's hearing, and Forest City responded to the Department's record requests. Forest City corrected its delinquency by filing the relevant annual returns on March 6, 2012. *Investigation by the Dep't of Telecomms. & Cable on its own motion, pursuant to G. L. c. 159, §§ 12, 32, 39, & G. L. c. 166, §§ 11, 12, regarding the failure by individually-named common carriers of telecomms. servs. to file annual returns for calendar years 2005, 2006, 2007, 2008, and/or 2009*, D.T.C. 11-AR-41 at Record Request 1 (filed Mar. 6, 2012).<sup>10</sup>

<sup>9</sup> Although Reliance's signed affidavit filed with the Department on February 27, 2012 was not notarized, Reliance sent the Department a notarized version of the affidavit on January 10, 2013. 11-AR-12, Ex. 9B; Affidavit from Michael Sauer, President, Reliance, to Department staff (Jan. 10, 2013).

<sup>10</sup> Citations to individual record requests and their responses pertaining to a specific docket in this Order shall be cited as "[Docket No.], RR-[Record Request No.]" A summary of Department-issued record requests and carrier responses in these proceedings can be found at Appendix B.

Forest City states that its failure to file timely was inadvertent and that it is “establishing an internal corporate process to ensure ongoing compliance.” 11-AR-41, RR-2. It further specifies that its “entire tax [and regulatory] department turned over in 2006 and this annual information report was not in the return database at that time”. *Id.* Forest City represents that its employees were confused as to whether the services it provides were subject to Department’s annual return filing requirements. *Id.*

Forest City’s internal confusion about its regulatory reporting obligations is insufficient justification for failing to meet annual filing obligations and not responding to the Department. Forest City is required to submit an annual return for every year it is registered by virtue of being a registered carrier.<sup>11</sup> G. L. c. 159, § 32; G. L. c. 166, § 11. Moreover, Forest City never sought clarification from the Department about its regulatory reporting obligations for the underlying services it provides in the Commonwealth.<sup>12</sup>

Although Forest City’s annual returns were delinquent, Forest City eventually complied with the Department’s filing requirements. In determining whether good cause exists for an extension of Forest City’s filing deadline, the Department must weigh the carrier’s interest in receiving such an extension against the public’s interest and the interests of any other affected parties. *D.P.U. 94-50*. Here, the carrier’s interests in receiving an extension are substantial, but there would be no benefit to the public if the Department refused to grant one. The Department

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<sup>11</sup> The Department notes that it recently amended the sample affidavit on its SBO form to include bold language that specifies the “[r]egistrant understands that failure to comply will be grounds for the Department to cancel the [r]egistrant’s registration/SBO and tariff(s), thus preventing the [r]egistrant from operating and/or providing telecommunications services within Massachusetts.” *Application for Registration for Telecommunications Service Providers Other Than Payphone Service Providers – Statement of Business Operations* at 8, available at

<http://www.mass.gov/ocabr/docs/dtc/telecom/forms/sbo-blankform5-2010.pdf>

<sup>12</sup> The Commonwealth’s Administrative Procedure Act permits entities to seek advisory rulings from state agencies about the applicability of various rules and regulations. G. L. c. 30A, § 8. This provision states:

On request of any interested person, an agency may make an advisory ruling with respect to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by that agency. In issuing the advisory ruling, the agency need not comply with the requirements of this chapter with respect to regulations.

knows of no other party that would be affected by a decision to grant Forest City an extension. The Department does not excuse Forest City's confusion about the regulatory status of its services but finds that it acted in good faith by cooperating with Department directives in this proceeding, establishing an internal compliance system, and providing assurances that it will file annual returns on a timely basis going forward. Accordingly, the Department, for good cause, establishes March 6, 2012 as the filing deadline for Forest City's 2008 and 2009 annual returns. G. L. c. 166, § 11; *D.P.U. 94-50*. The Department extends this one-time courtesy with the expectation that Forest City will comply with the Department's requirements going forward. As Forest City's 2008 and 2009 annual returns are now current, the Department dismisses 11-AR-41.

D. Global Crossing

The Department's records indicate that Global Crossing did not file annual returns for calendar years 2008 and 2009. However, in response to this investigation, Global Crossing provided evidence that it withdrew its registration with the Department in 2000 under its former registered name, Frontier Communications of the West, Inc. ("FCW"). 11-AR-43, RR-1. Global Crossing stated that it withdrew as FCW because that "was the name listed on the company's certification." *Id.*

Although Global Crossing should have withdrawn under the name under which it was operating at the time, it was not actually registered with the Department in 2008 and 2009. Global Crossing had withdrawn its registration with the Department but was not removed from the Department's system because FCW was the carrier listed on the Certificate of Withdrawal. As Global Crossing was not actually registered with the Department in 2008 and 2009, it was not required to file annual returns for those years. Therefore, the Department dismisses 11-AR-43.

E. GPCS

GPCS was a registered carrier with an SBO and an approved intrastate tariff on file with the Department in 2008 and 2009 and therefore had to file an annual return, or if applicable, an affidavit with the Department for those years pursuant to G. L. c. 159, § 32. A carrier without intrastate revenues in a particular year is not subject to statutory forfeitures under G. L. c. 166, § 12, but must file a notarized affidavit attesting to this fact, for each relevant year. *D.T.E. 02-13-G*. On April 3, 2012, in lieu of filing its delinquent 2008 and 2009 annual returns, GPCS submitted a notarized affidavit to the Department attesting that GPCS had not provided any telecommunications services nor generated any revenue from intrastate telecommunications services in 2008 or 2009.<sup>13</sup>

As GPCS was not “doing business in the Commonwealth” in 2008 and 2009 for purposes of G. L. c. 166, §§ 11, 12, and it ultimately filed the required affidavit, the Department finds good cause under G. L. c. 159, § 32 to establish April 3, 2012, as the filing deadline for GPCS’s notarized affidavit for 2008 and 2009. *See D.T.E. 02-13-G; D.P.U. 94-50*. Accordingly, the Department dismisses 11-AR-44.<sup>14</sup>

IV. ORDER

After notice, hearing, opportunity for comment, and due consideration, it is

ORDERED that the investigation relative to New England Municipal Telephone Associates LLC, in D.T.C. 11-AR-9 is dismissed; and it is

FURTHER ORDERED that the investigation relative to Reliance Communications International, Inc., in D.T.C. 11-AR-12 is dismissed; and it is

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<sup>13</sup> Letter from James Glavin, Chief Financial Officer, GPCS, to Department staff (received Apr. 3, 2012).  
<sup>14</sup> Separate and apart from the 11-AR-44 proceeding, GPCS filed a Certificate of Withdrawal with the Department on December 28, 2012, withdrawing its SBO and tariff on file with the Department. GPCS, therefore, is no longer authorized to provide telecommunications services in the Commonwealth.

FURTHER ORDERED that the investigation relative to Forest City Network Solutions, LLC, in D.T.C. 11-AR-41 is dismissed; and it is

FURTHER ORDERED that the investigation relative to Global Crossing Bandwidth, Inc., in D.T.C. 11-AR-43 is dismissed; and it is

FURTHER ORDERED that the investigation relative to GPCS of Massachusetts LLC, in D.T.C. 11-AR-44 is dismissed.

By Order of the Department,

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Geoffrey G. Why, Commissioner



## **RIGHT OF APPEAL**

Appeals of any final decision, order, or ruling of the Department of Telecommunications and Cable may be brought pursuant to applicable state and federal laws.

## APPENDIX A

<b><u>Evidentiary Records</u></b>	
<b>Carrier: NEMTA, Docket # 11-AR-9</b>	
<b>Exhibit #</b>	<b>Exhibit Description</b>
1	SBO
2	Tariff No. 1 Cover Page
3	Secretary of Commonwealth Database Printout
4	Reminder Notice CY2009
5	1st Extension 8/26/10 (Certified Mail)
6	Signed Certified Receipt Card
7A	E-mail between Admin. Ursula Estremera and Tom McCrosson 2/9/2012
7B	E-mail between H.O. Kerri Deyoung Phillips and Tom McCrosson 2/10/2012
7C	E-mail delivery failure notice
7D	E-mail between H.O. Kerri DeYoung Phillips and Patrick Crocker 2/9/2012
7E	Electronic submission of CY2009 and CY2010 Annual Return 2/10/2012
7F	Copy of check in the amount of \$6,500.00 returned to NEMTA and copy of certified mailing slip
7G	Response to DTC Notice of Investigation filed with the DTC on 2/7/2012 including an application with the Secretary of the Commonwealth for reinstatement as a Foreign LLC and Foreign LLC Annual Reports filed with the Secretary of the Commonwealth for CY's 1999-2011
<b>Carrier: Reliance, Docket # 11-AR-12</b>	
<b>Exhibit #</b>	<b>Exhibit Description</b>
1	SBO
2	Foreign Corporation Certificate of Authority
3	Tariff No. 1 Cover Page
4	Secretary of Commonwealth Database Printout
5	FCC Form 499 Filer Profile
6	Reminder Notice CY2009
7	1st Extension 8/26/10 (Certified Mail)
8	Signed Certified Receipt Card
9A	E-mail between Reliance staff and H.O. Kerri DeYoung Phillips
9B	Request for Excusal filed with DTC 2/27/2012
<b>Carrier: Forest City, Docket # 11-AR-41</b>	
<b>Exhibit #</b>	<b>Exhibit Description</b>
1	SBO

2	Tariff No. 1 Cover Page
3	Secretary of Commonwealth Database Printout
4A	Reminder Notice CY2008
4B	Reminder Notice CY2009
5	1st Extension 8/26/10 (Certified Mail)
6	Signed Certified Receipt Card
<b>Carrier: Global Crossing, Docket # 11-AR-43</b>	
<b>Exhibit #</b>	<b>Exhibit Description</b>
1	Telecommunications Database Registration Printout in lieu of SBO
2	Secretary of Commonwealth Database Printout
3	FCC Form 499 Filer Profile
4A	Reminder Notice CY2008
4B	Reminder Notice CY2009
5	1st Extension 8/26/10 (Certified Mail)
6	Proof Notice Returned Undeliverable
7	Signed Certified Receipt Card
<b>Carrier: GPCS, Docket # 11-AR-44</b>	
<b>Exhibit #</b>	<b>Exhibit Description</b>
1	SBO
2	Foreign Corporation Certificate of Authority
3	Tariff No. 1 Cover Page
4	Secretary of Commonwealth Database Printout
5A	Reminder Notice CY2008
5B	Reminder Notice CY2009
6	1st Extension 8/26/10 (Certified Mail)
7	Signed Certified Receipt Card
8	Proof Notice Returned Undeliverable

## APPENDIX B

<b><u>Record Requests</u></b>		
<b>Carrier: Forest City, Docket # 11-AR-41</b>		
<b>Record Request #</b>	<b>Request Description</b>	<b>Response Description</b>
1	All delinquent annual returns	Filed 2008 & 2009 annual returns
2	Reasons why the Department should not impose fines	Failure to file was inadvertent
3	Any other relevant matters, including the Notice	Notice was not handled appropriately
<b>Carrier: Global Crossing, Docket # 11-AR-43</b>		
<b>Record Request #</b>	<b>Request Description</b>	<b>Response Description</b>
1	Documentation of Global Crossing's withdrawal of certification	Attached copies of letters to the Department regarding the withdrawal under the name "Frontier Communications of the West, Inc." and its Certificate of Withdrawal from the Secretary of State
2	The timing and circumstance of Global Crossing's cessation of telecommunications services in Massachusetts	See letters in RR-1
3	Reasons why Global Crossing continued filing annual reports with the Secretary of State	For technical corporate reasons
4	Any other relevant matters, including the Notice and why the Department should not impose fines	Global Crossing did not receive the Notice as it had withdrew its registration from the Department under its former name in 2000
<b>Carrier: GPCS, Docket # 11-AR-44</b>		
<b>Record Request #</b>	<b>Request Description</b>	<b>Response Description</b>
1	GPCS's current address and why it changed	Current address provided; ownership of the company changed

2	Whether GPCS provides telecommunications services in Massachusetts	GPCS does not provide telecommunications services in Massachusetts
3	Annual returns for 2008 & 2009	GPCS does not provide telecommunications services in Massachusetts and states its understanding that there is no requirement to file annual returns
4	Any other relevant matters, including the Notice and why the Department should not impose fines	Notices and communications from the Department will be handled appropriately if the Department uses GPCS' current mailing address